DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 02-0461
Indiana Corporate Income Tax
For the Tax Years 1997, 1998, and 1999

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ISSUES

I. Elimination of Interest Income Attributable to Holding Company's Intercompany Bonds – Gross Income Tax.

Authority: 45 IAC 1.1-4-5; 45 IAC 1.1-4-5(a); 45 IAC 1.1-4-5(b); 45 IAC 1-1-166.

Taxpayer – representing members of its affiliated companies – maintains it was entitled to a deduction from its gross income. Taxpayer claims the deduction because interest was transferred from affiliated company to another. The audit disallowed the deduction, and taxpayer protests. Taxpayer argues that money received in the form of fictional intercompany interest payments during 1997, 1998, and 1999 should not have been disallowed as intercompany receipts; taxpayer admits that Holding Company was not qualified to do business in Indiana during 1997 and 1998 but that in 1998, Holding Company merged into taxpayer with taxpayer remaining as the sole surviving entity.

II. Elimination of Intercompany Receipts – Gross Income Tax.

Authority: IC 6-8.1-5-1(b); IC 6-2.1-3-3; 45 IAC 1.1-1-5; 45 IAC 1.1-4-5(a); 45 IAC 1-1-166; 45 IAC 1-1-51; 45 IAC 1-1-10.

Taxpayer argues that the audit erred in disallowing as intercompany receipts money received from numerous trusts. The audit did so because the trusts were not included in the consolidated gross income tax filings. Taxpayer maintains that the income from the trusts was fictional and was merely a tax reporting convenience.

III. Exclusion of Out-of-State Income – Gross Income Tax.

Authority: IC 6-8.1-5-1(b); IC 6-2.1-3-3.

Taxpayer argues that the audit erred in disallowing the deduction of fee income reported as Indiana receipts. Taxpayer maintains that the fee income was earned at the initiation of an investment in a New York building and that the work related to the investment was completed in New York. Because the "preponderance of the work was completed outside of Indiana,"

taxpayer believes that the fee income should be deducted from the Indiana gross income tax base.

IV. Excluding Out-of-State Sales – Gross Income Tax.

Authority: IC 6-8.1-5-1(b); IC 6-2.1-2-2; IC 6-2.1-1-13; IC 6-2.1-1-2; 45 IAC 1.1-6-2; 45 IAC 1.1-2-5(a); 45 IAC 1-1-96; 45 IAC 1-1-54; 45 IAC 1-1-51.

Taxpayer challenges the audit's decision disallowing the exclusion of certain sales receipts attributable to non-Indiana jurisdictions. Taxpayer maintains that the sales receipts should be excluded because taxpayer has established nexus in the other jurisdictions.

V. Intercompany Aircraft Rent Payments – Apportionment / Property Factor.

Authority: IC 6-3-2-2(b); IC 6-3-2-2(c); 45 IAC 3.1-1-41.

In calculating its property factor, taxpayer included – as rented property – the value of certain airplane rental payments. The rent was paid by one member of the consolidated return to another member of the consolidated return. The audit removed the rental value from the property factor on the ground that the rent consisted of "intercompany receipts." Taxpayer disagrees.

VI. Addback of Riverboat Wagering Tax – Adjusted Gross Income.

Authority: IC 6-3-2-1(b); IC 6-3-1-3.5(b)(3); Aztar Ind. Gaming v. Dept. of State Revenue, 806 N.E.2d 381 (Ind. Tax Ct. 2004); 45 IAC 3.1-1-8(3)(a).

Taxpayer disagrees with the audit's adjustment adding back a federal deduction for Riverboat Wagering Tax.

VII. Exclusion of Dividend and Interest Income – Gross Income Tax.

Authority: IC 6-2.1-1-2(c)(6); IC 6-2.1-1-2(d).

Taxpayer owns life insurance companies located outside the state. One of the life insurance companies – located in Minnesota – paid interest and dividends to parent company. Taxpayer claims that the interest and dividends should have been excluded from the consolidated group's gross income tax calculation because the interest and dividends were earned outside of Indiana and because the Minnesota subsidiary does not have a business situs within Indiana.

VIII. Elimination of Intercompany Transactions Between Members of a Consolidated Gross Income Tax Return – Gross Premiums Privilege Tax / Gross Income Tax.

Authority: IC 27-1-18-2(a); IC 27-1-18-2(b); IC 6-3-2-2.8; 45 IAC 1.1-4-5(a); 45 IAC 1-1-166.

Taxpayer argues that, for purposes of the Gross Premiums Privilege Tax, it is entitled to exclude intercompany receipts when calculating its gross income tax.

STATEMENT OF FACTS

Taxpayer is an in-state insurance company which provides insurance, investment, and lending products. Taxpayer is also the parent company of numerous subsidiaries which together file a consolidated tax return. These subsidiaries provide support service to the parent and also to certain related insurance companies. The related insurance companies are purportedly domiciled outside of Indiana.

The Department of Revenue (Department) conducted an audit review of taxpayer's tax returns and business records. The audit resulted in the assessment of additional corporate income tax. Taxpayer protested the audit's determination and also submitted additional claims for refund. An administrative hearing was conducted during which taxpayer's representative explained the basis for its protest of the audit review's findings. In addition, taxpayer's representative attempted to justify the grounds for granting the additional refunds unrelated to the audit. This Letter of Findings, addressing both the audit and refund issues, results.

DISCUSSION

I. Elimination of Interest Income Attributable to Holding Company's Intercompany Bonds – Gross Income Tax.

For 1997, 1998, and 1999, taxpayer excluded certain amounts of money from its gross income tax calculation. Taxpayer did so on the ground that the money represented "intercompany transactions" among members of the consolidated group. The audit disallowed the deduction of money received from one of the affiliated companies – hereinafter "Holding Company" – on the ground that Holding Company was not authorized to do business in Indiana.

Taxpayer disagrees stating that the audit erred in its decision; taxpayer claims that the deduction should be reinstated for the tax year 1999.

45 IAC 1-1-166 states in part as follows:

> The total gross receipts of all affiliated group members are reported on the [consolidated] return, then receipts from intercompany sales of property and payments of dividends, rents, interest and service charges may be eliminated from taxable gross receipts. However, receipts from distributions in connection with the dissolution of any group member and income earned by any group member outside the state may not be eliminated on the return as intercompany receipts.

Effective January 1, 1999, the Department's Gross Income Tax regulations were revised. The revised regulation, designated as 45 IAC 1.1-4-5(a), states that:

> Except as provided in subsections (b) and (c), an affiliated group of corporations, as defined in IC 6-2.1-5-5, is entitled to a deduction from the gross income reported on the consolidated return. The amount of the deduction is the total gross income received from transactions between the members of the group. (b) The deduction provided by subsection (a) does not apply to gross income received because of the dissolution of a member of the affiliated group. Also the deduction does not apply to gross income derived *from sources outside Indiana*. Nor does the deduction apply to gross income derived from an affiliate not qualifying to be included in the consolidated filing. (*Emphasis added*).

Under 45 IAC 1-1-166, the audit was correct in eliminating the 1997 and 1998 deductions between taxpayer and Holding Company because Holding Company was not located in nor qualified to do business in Indiana. "[I]ncome earned by any group member outside the state may not be eliminated on the return as intercompany receipts." 45 IAC 1-1-166.

Nevertheless, taxpayer maintains that the 1999 deduction should not have been eliminated because taxpayer and Holding Company merged during 1999; taxpayer was the only surviving member. Under 45 IAC 1.1-4-5, the audit was correct in eliminating the 1999 deduction because, insofar as the contemporaneous identity of taxpayer and Holding Company, there were no "members of the group." 45 IAC 1.1-4-5(a). The Holding Company ceased to exist, and any income attributable to the now vanished Holding Company was simply taxpayer's income; by definition, there were no intercompany receipts to eliminate or deduct.

In addition, because the money attributable to the vanished Holding Company came from sources outside Indiana, it was money earned outside the state, and the intercompany deduction does not "not apply to gross income derived from sources outside Indiana." 45 IAC 1.1-4-5(b). This income is not subject to Indiana's gross income tax.

FINDING

Taxpayer's protest is respectfully denied.

II. Elimination of Intercompany Receipts – Gross Income Tax.

The audit eliminated intercompany deductions between one of taxpayer's subsidiaries ("Subsidiary) and numerous trusts. The deductions represented fictional interest payments which were never paid. The audit did so because the trusts were not included in the consolidated gross income tax filing.

Taxpayer disagrees and states that the deductions should be allowed. Taxpayer explains as follows; taxpayer initiated financing transactions which required the establishment of various trusts. Taxpayer did so by "issuing debt" to a Delaware trust "which in turn issued preferred stock to the trust's investors." The trust interests were held by unrelated entities with the exception of a small amount of "beneficial interest held by [Subsidiary]." Taxpayer explains that the interest which was due Subsidiary had not been paid and that taxpayer has no intention of ever paying the interest.

Although the interest would never be paid, on its consolidated federal income tax return, taxpayer took a deduction for the full amount of the interest related to the debt issued to the trust. Taxpayer describes this as "fictitious income." After creating this "fictitious income," the "fictitious income" amounts were eliminated in the Indiana Gross Income Tax calculation. The audit disallowed this elimination.

45 IAC 1-1-166 states in part as follows: "The total gross receipts of all affiliated group members are reported on the [consolidated] return, then receipts from intercompany sales of property and payments of dividends, rents, interest and service charges may be eliminated from taxable gross receipts."

45 IAC 1.1-4-5(a) provides that, "an affiliated group of corporations, as defined in IC 6-2.1-5-5, is entitled to a deduction from the gross income reported on the consolidated return. The amount of the deduction is the total gross income received from transactions between the members of the group."

Under either 45 IAC 1-1-166 or 45 IAC 1.1-4-5(a), the audit was correct in eliminating these "intercompany deductions" because the trust companies were never members of the "affiliated groups of companies."

Nonetheless, taxpayer states that the amounts should be eliminated because – although reported on the federal income tax return – the interest would never actually be paid but was merely a "tax reporting convenience." The Department must disagree because the amounts – such as they are – constitute "constructive receipts" as defined in 45 IAC 1-1-10. That regulations states that, "'Constructive receipts' are those items of gross income which are not actually received by the taxpayer but which are credited to him, available for his withdrawal, paid to another for his benefit, or represent income to which he is entitled." *See also* 45 IAC 1.1-1-5.

Taxpayer has anticipated the "constructive receipts" argument. Taxpayer states that, "even if the first argument is found to be in error and constructive receipts are found to exist, clearly no Indiana nexus can be attached." Taxpayer states that the fictitious interest amounts were attributable to Subsidiary, a Delaware company, which does not have an Indiana nexus. Taxpayer's argument is as follows: "In the facts [taxpayer] remits [fictitious] interest payments to a Delaware trust pursuant to the debt instrument held by the trust. The trust remits the [fictitious] dividend income to its passive investment holders. In this instance, the entity is [Subsidiary] a Delaware holding company. No Indiana nexus is established; therefore, no income should be included in the tax base." However, as elsewhere stated by taxpayer, "This interest was for business and legal purposes and had no tax motivation in itself. The interest due [Subsidiary] has not been paid to date and [] will never be paid."

Taxpayer's "nexus" argument is apparently based on the proposition that the constructive interest income was attributable to doing business with an out-of-state entity. IC 6-2.1-3-3 provides that "[g]ross income derived from business conducted in commerce between the state of Indiana and either another state or a foreign county is exempt from gross income tax to the extent the state of Indiana is prohibited from taxing that gross income by the United States Constitution."

Taxpayer's "nexus" argument is unfounded because the interest amounts were not the result of taxpayer doing business with an out-of-state entity. The amounts were spun out of whole cloth as the result of a complicated trust/debt/interest scheme between itself and its own Delaware Subsidiary which was also a member of the consolidated group. As a result of that transaction, taxpayer obtained "constructive receipts" which were duly reported on its federal income tax returns. This transaction may have had unanticipated gross income tax implications, but there is nothing related to the transaction which raises questions of a constitutional dimension. In addition, taxpayer assumes that Subsidiary has established an out-of-state nexus and that the income was "directly related to an integral part of a business conducted at a 'business situs' outside Indiana." 45 IAC 1-1-51. Without additional information, the Department is unable to accept taxpayer's conclusion that the constructive receipts were attributable to a source outside Indiana. Taxpayer has not met its burden of demonstrating that the proposed assessment is incorrect. IC 6-8.1-5-1(b).

FINDING

Taxpayer's protest is respectfully denied.

III. Exclusion of Out-of-State Income – Gross Income Tax.

On its 1999 gross income tax return, taxpayer excluded certain "fee income." The "fee income" was attributable to a "Consultancy Agreement" between taxpayer and an unrelated entity. In the Consultancy Agreement, taxpayer agreed to provide business and financial consulting services related to taxpayer and its affiliates' investment in a building located in New York. Taxpayer claims that "[a] significant amount or (sic) work surrounding this engagement was incurred at the initiation of the investment and was completed in New York." Taxpayer concludes that because the parties' "contract provides for compensation relating to New York property, and the preponderance of the work was completed outside of Indiana, [taxpayer] believes that it is appropriate to exclude such from the Indiana gross receipts base."

Taxpayer is correct in pointing out that money earned from doing business outside Indiana is not subject to the Gross Income Tax. IC 6-2.1-3-3 provides that "[g]ross income derived from business conducted in commerce between the state of Indiana and either another state or a foreign county is exempt from gross income tax to the extent the state of Indiana is prohibited from taxing that gross income by the United States Constitution."

However, in order to establish that it is entitled to deduct the amount earned from the out-of-state contract, taxpayer must meet its burden of proving that the assessment is incorrect. "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." IC 6-8.1-5-1(b). Taxpayer's evidence consists of the twin assertions that the "preponderance of the work was completed outside of Indiana" and that a "significant" amount of the contract work was performed in New York. These statements alone are insufficient, and taxpayer has not met its burden of proving that the audit's determination was incorrect.

FINDING

Taxpayer's protest is respectfully denied.

IV. Excluding Out-of-State Sales – Gross Income Tax.

A. Five Insurance Broker/Dealers.

Taxpayer has five subsidiaries which sell variable and mutual fund products. The five subsidiaries sell their investment products to customers within Indiana and to customers outside Indiana through a network of independent agents. The five subsidiaries earned commission income on each of the sales.

The audit reported that "[t]he commission income was sourced to the location where the sale and/or policyholder resided and [was] therefore deducted as out of state sales by the taxpayer." The audit disallowed the deduction of these sales as out-of-state income because the five subsidiaries "have no property or payroll located outside of Indiana," and because the "income was not directly related to a business situs outside of Indiana."

The audit did so under authority of 45 IAC 1-1-51 which states that, "If a taxpayer's commercial domicile is in Indiana, all of the income from intangibles will be taxed under IC 6-2-1-1(m) . . . except that income which may be directly related to an integral part of a business regularly conducted at a 'business situs' outside Indiana." *See also* 45 IAC 1.1-6-2.

Taxpayer disagrees with the audit's decision and argues that the five subsidiaries established a nexus with the out-of-state locations in which the original sales were completed. Taxpayer points out the foreign states provided services to the five subsidiaries, that it was taxpayer's intent to establish its investment products in those foreign states, that it maintained an inventory of brochures and selling materials in the foreign states, that it had filed state income tax returns in the foreign states, and that none of the foreign states had "rejected such nexus." Taxpayer maintains that the income should be apportioned to those foreign states.

Gross income tax is imposed upon the receipt of the entire taxable gross income of a resident or domiciliary of Indiana. IC 6-2.1-2-2. The term "taxable gross income" means all gross income which is not exempt from tax under IC 6-2.1-3 et seq. less all deductions which are permitted under IC 6-2.1-4 et seq. IC 6-2.1-1-13. In particular, IC 6-2.1-1-2 provides that "'gross income' means all the gross receipts a taxpayer receives (1) from trades, business, or commerce . . . . [and] (3) from the sale, transfer, or exchange of property, real or personal, tangible or intangible . . ." In regards to the taxpayer's own commission income, 45 IAC 1-1-96 provides that "[g]ross receipts from services means receipts derived from activities performed in the process of completing a service agreement or contract . . . Such income includes, but is not limited to commissions, fees, receipts from service contracts, or income from similar sources." *See also* 45 IAC 1.1-2-5(a).

Under the regulations governing the gross income tax, "taxable gross income" includes income that is derived from "intangibles." 45 IAC 1-1-51. The term "intangibles" includes:

> notes, stocks in either foreign or domestic corporations, bonds, debentures, certificates of deposit, accounts receivable, brokerage and trading accounts, bills of sale, conditional sales contracts, chattel mortgages, "trading stamps," final judgments, leases, royalties, certificates of sale, choses in action *and any and all other evidences of similar rights capable of being transferred, acquired or sold.* (*Emphasis added*). Id. *See also* 45 IAC 1.1-6-2.

In order for Indiana to impose the gross income tax on income derived from taxpayer's intangibles, the Department must determine that the income is derived from a "business situs" within the state. Id. The regulation states that taxpayer has established a "business situs" within the state "[i]f the intangible or the income derived therefrom forms an integral part of a business regularly conducted at a situs in Indiana . . . ." Id. Once the taxpayer has established a "business situs" within the state, "and the intangible or the income derived therefrom is connected with that business, either actually or constructively, the gross receipts of those intangibles will be required to be reported for gross income tax purposes." Id.

For purposes of the state's gross income tax, the Department concludes that commission income derived from the taxpayer's sales of investment vehicles, is income derived from a "business situs" within Indiana and is properly subject to the state's gross income tax scheme. Taxpayer provided its investment services in Indiana, the five subsidiaries do not have property or payroll in the foreign states, and neither taxpayer nor its subsidiaries have established a business situs in any of the foreign states.

Accordingly, because taxpayer's business situs is within the state and because the income at issue is "connected with that business, either actually or constructively," the income is subject to the state's gross income tax.

B. Delaware Holding Company.

Taxpayer maintains that one of its subsidiaries is a Delaware holding company and is "different from those previously discussed." Taxpayer states this Delaware holding company "received dividends from its subsidiaries." Taxpayer concludes that the Delaware holding company's "activities in the sale[] and distribution of certain financial intangibles were sufficient to establish nexus in those jurisdictions where the products were sold and to require the apportionment of business to those foreign states."

The audit's description of Delaware holding company's business differs somewhat from that of taxpayer. The audit states that – along with the five subsidiaries described previously – the Delaware holding company earned commission income from the sale of investment vehicles. The audit found that the Delaware holding company did not have payroll or property outside Indiana and that its income "was not directly related to a business situs outside of Indiana . . . ."

Taxpayer has failed to demonstrate that the Delaware holding company's business substantively differs from that of the other five subsidiaries. The burden of demonstrating the proposed assessment is wrong rests with taxpayer. IC 6-8.1-5-1(b). Taxpayer has failed to meet that burden.

FINDING

Taxpayer's protest is respectfully denied.

V. Intercompany Aircraft Rent Payments – Apportionment / Property Factor.

During the audit period, taxpayer included as rented property the value of the aircraft taxpayer leased from one of its subsidiaries. The audit found that because both taxpayer and its subsidiary were in the consolidated return and because all intercompany receipts had been eliminated, the rental amounts should be eliminated when calculating the property factor.

The audit disagreed with taxpayer's calculation of its "property factor." According to the audit, "the taxpayer included in [r]ented property, intercompany aircraft rental from [taxpayer] to [subsidiary]. The audit concluded that because, "these companies are in the consolidated return and all intercompany receipts have been eliminated, these rents should be eliminated in calculating the property factor."

Taxpayer challenges the audit's decision stating that "[c]onfidence can be gained that the [rental] expense is not being double counted in the apportionment factor."

Taxpayer's protest somewhat misses the mark. The issue is not whether the value of the rental payments is being double counted but whether the audit was correct in excluding the value of the rental payments from the property factor.

IC 6-3-2-2(b) provides for a standardized formula for determining the tax liability of a corporation which receives income from sources both within and outside the state. That section states that: "[I]f business income of a corporation or a nonresident person is derived from sources within the state of Indiana and from sources without the state of Indiana, then the business income derived from sources within this state shall be determined by multiplying the business income derived from sources both within and without the state of Indiana by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three . . . ." IC 6-3-2-2(c) states that, "The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year and the denominator which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the taxable year."

Taxpayer maintains that the value of the rental payments should be included in the property value calculation. For illustrative purposes, one of the taxpayer's subsidiaries owns a $1,000,000 airplane; the subsidiary's airplane is "rented" to taxpayer. Again for purposes of illustration, taxpayer pays subsidiary $1,000 to rent the airplane during one of the tax years here at issue. In calculating the property factor, taxpayer used the $1,000 to calculate its property factor because – according to taxpayer – the $1,000 represented "real and tangible personal property owed or rented and used in this state during the taxable year . . . ." IC 6-3-2-2(c).

Setting aside the audit's characterization of the rental as "intercompany receipts," the audit was correct in eliminating the value of the rent payments (the $1,000 cited in the example above) from the property factor because the $1,000 is not "income producing property." The $1,000,000 airplane produces business income; the $1,000 rent payment does not. 45 IAC 3.1-1-41 states that, "The property factor includes all property owned or rented by the taxpayer which is actually used or is available for or capable of being used to produce business income."

In addition, the audit was correct in eliminating the rental receipts because the value of the income producing property has – presumably – already been included in the group's consolidated return. There is no obvious justification for including the value of the ($1,000,000) airplane in the property factor and also including the value of the rental received from that same airplane.

FINDING

Taxpayer's protest is respectfully denied.

VI. **Addback of Riverboat Wagering Tax** – Adjusted Gross Income.

The audit made an adjustment to taxpayer's distributive share of partnership income received from a gambling company. The adjustment added back a deduction made to taxpayer's federal return by adding back a federal deduction for Riverboat Wagering Tax.

Taxpayer states that it "disagrees with the finding that the wagering tax is a tax which is disallowed for computing [Indiana] Adjusted Gross Income."

Indiana adjusted gross income tax is imposed upon the adjusted gross income of a corporation that is derived from Indiana sources. IC 6-3-2-1(b). Indiana adjusted gross income is the same as "taxable income" as defined by I.R.C. § 63 and adjusted according to IC 6-3-1-3.5(b). One of those adjustments requires the taxpayer to "[a]dd an amount equal to any deduction or deductions allowed or allowable pursuant to Section 63 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state of the United States." IC 6-3-1-3.5(b)(3). *See also* 45 IAC 3.1-1-8(3)(a).

The Indiana Tax Court has addressed taxpayer's specific argument and has determined that the Riverboat Wagering Tax "is an excise tax that is measured by income." Aztar Ind. Gaming v. Dept. of State Revenue, 806 N.E.2d 381, 386 (Ind. Tax Ct. 2004). The audit was correct in making the addback adjustment because the Riverboat Wagering Tax is "subject to the add-back provision of Indiana Code § 6-3-13.5(b)(3)." Id.

FINDING

Taxpayer's protest is respectfully denied.

VII. **Exclusion of Dividend and Interest Income** – Gross Income Tax.

In addition to challenging determinations found within the audit, taxpayer seeks a further adjustment for calendar years 1998 and 1999. Taxpayer maintains that dividends, interest, and administrative fees received from a Minnesota company should have been eliminated from taxpayer's consolidated gross income subject to Indiana gross income tax.

Taxpayer bought Minnesota Company at the end of 1998. At the end of 1999, Minnesota Company paid taxpayer a $200,000,000 dividend. This amount was originally included in taxpayer's 1999 gross income. Including this amount increased taxpayer's gross income tax by $2,400,000. In addition, Minnesota Company made interest payments to taxpayer. Interest payments of approximately $1,000,000 were paid during 1998 and 1999. Taxpayer claims that these two amounts should have been eliminated from taxpayer's 1998 and 1999 gross income tax returns. Accordingly, taxpayer seeks a return of the gross income tax paid on the $201,000,000.

Taxpayer states that the "GIT does not include receipts of Indiana corporations from trade or business conducted at a legal situs outside Indiana or from activities incident to that trade or business." Taxpayer concludes that the receipts consisted of dividends and interest received from a company doing business outside Indiana.

As support of its contention, taxpayer points to IC 6-2.1-1-2(c)(6) which states that, "The term 'gross income' does not include . . . gross receipts received by corporations incorporated under the laws of Indiana from a trade or business situated and regularly carried on at a legal situs outside Indiana or from activities incident to such trade or business (including the disposal of capital assets or other properties which were acquired and used in such trade or business)."

However, "The exclusion provided by clause (6) of subsection (c) does not apply to any receipts of a taxpayer received as interest or dividends, from sales, other receipts from investments not acquired or disposed of in connection with the taxpayer's regular business, or to bonuses or commissions received by any taxpayer." IC 6-2.1-1-2(d).

Therefore, the issue is whether the $201,000,000 consisted of money received from doing business in Minnesota or whether it consisted of interest or dividends attributable to an investment in Minnesota Company.

There is no support for the contention that the $201,000,000 was earned from conducting business within Minnesota. Taxpayer freely admits that the amounts were properly characterized as "interest" and "dividends" received from investing in Minnesota Company.

FINDING

Taxpayer's request for a refund of gross income taxes on the amount of dividends and interest payments received from Minnesota Company is respectfully denied.

VIII. Elimination of Intercompany Transactions Between Members of a Consolidated Gross Income Tax Return – Gross Premium Privilege Tax / Gross Income Tax.

Taxpayer claims that one of its subsidiaries received "administrative fees and interest payments" from life insurance companies which were themselves also taxpayer's subsidiaries. Taxpayer explains that the "vast majority of the [life insurance companies] are either incorporated or registered to do business in Indiana." Taxpayer now requests an adjustment of approximately $1,000,000 for these intercompany transfers.

Pursuant to IC 6-3-2-2.8, life insurance companies are not subject to the state's adjusted gross income tax. Out-of-state life insurance companies pay Indiana Gross Premium Privilege Tax. IC 27-1-18-2(a). In lieu of paying the gross income tax, domestic life insurance companies may elect to pay Indiana Gross Premium Privilege Tax. Id. In order to do so, the domestic insurance company must file a "notice of election." IC 27-1-18-2(b).

Taxpayer's life insurance companies – both domestic and out-of-state – paid Gross Premium Privilege Tax during 1998 and 1999. Taxpayer states that its life insurance companies – at least those which would have otherwise been subject to gross income tax had they elected otherwise – paid administrative fees and interest payments to another of taxpayer's subsidiaries. Taxpayer states that these administrative fees and interest payments should be eliminated as intercompany transactions. *See* 45 IAC 1-1-166; 45 IAC 1.1-4-5(a).

Taxpayer's request for a refund of gross income tax is counter-intuitive and is supported by neither law nor common sense. The life insurance companies were either subject to or elected to pay the Gross Premium Privilege Tax; the life insurance companies were not part of the consolidated gross income tax return. Having paid the Gross Premium Privilege Tax, taxpayer's request – that it now eliminate intercompany transactions pursuant to the entirely unrelated provisions of the Gross Income Tax law – is unwarranted.

FINDING

Taxpayer's request to eliminate on its consolidated gross income tax returns intercompany transactions between itself and the life insurance companies is respectfully denied.

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